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## THE FLORIDA PUBLIC SERVICE COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re: Consideration of  
BellSouth Telecommunications,  
Inc.'s entry into interLATA  
services pursuant to Section 271  
of the Federal  
Telecommunications Act of 1996.

DOCKET NO. 960786-TL  
ORDER NO. PSC-97-1459-FOF-TL  
ISSUED: November 19, 1997

EX PARTE OR LATE FILED

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FINAL ORDER ON BELLSOUTH TELECOMMUNICATIONS, INC.'S  
PETITION FILED PURSUANT TO SECTION 271(C) OF THE  
TELECOMMUNICATIONS ACT OF 1996

AND

PROPOSED AGENCY ACTION

ORDER ON STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS

BY THE COMMISSION:

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**ACRONYMS**

ACSI	American Communications Services, Inc., American Communications Services of Jacksonville Inc.
AIN	Advanced Intelligence Network
ALEC	Alternative Local Exchange Carrier
ALI/DMS	Automatic Location Identification/Data Management System
AT&T	AT&T Communications of the Southern States, Inc.
BAPCO	BellSouth Advertising and Publishing Company
BOC	Bell Operating Company
BellSouth/BellSouth	BellSouth Telecommunications, Inc
CABS	Carrier Access Billing System
CGI	Common Gateway Interface
CSR	Customer Service Record
CWA	Communications Workers of America
DA	Directory Assistance
DOE	Direct Order Entry
DOJ	Department of Justice
DSAP	Direct Order Entry Support Application Program
EBI	Electronic Bonding Interface
ECG	Electronic Communications



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	Gateway
EDI	Electronic Data Interchange
EDI-PC	Electronic Data Interchange- Personal Computer
EXACT	Exchange Access Control and Tracking System
FCC	Federal Communications Commission
FCCA	Florida Competitive Carriers Association
FCTA	Florida Cable Television Association
FID	Field Identifier
FOC	Firm Order Confirmation
FPSC	Florida Public Service Commission
FUEL	FID, USOC, and Edit Library
ICI	Intermedia Communications of Florida, Inc.
ILEC	Incumbent Local Exchange Carrier
ISP	Information Service Provider
ISDN	Integrated Services Digital Network
IXC	Interexchange Carrier
LCSC	Local Carrier Service Center
LENS	Local Exchange Navigation System
LEO	Local Exchange Ordering
LESOG	Local Exchange Service Order

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	Generator
LIDB	Line Information Database
LRIC	Long Run Incremental Cost
LSR	Local Service Request
LTR	Local Transport Restructure
MAC	Move, add, or change order
MCI	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
MFS	Metropolitan Fiber Systems of Florida, Inc.
OSS	Operational Support Systems
PCS	Preferred Carrier Services, Inc.
RBOC	Regional Bell Operating Company
RNS	Regional Negotiation System
SCE	Service Creation Environment
SCP	Signaling Control Point
SGAT	Statement of Generally Available Terms and Conditions
SMS	Service Management System
SOCS	Service Order Control System
SOLAR	Service Order Layout Assembly Routine
SONGS	Service Order Negotiation System
Sprint/SMNI	Sprint Communications Company Limited Partnership/Sprint Metropolitan Network, Inc.

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SS7	Signaling System 7
STP	Signaling Transfer Point
STS	Shared Tenant Services
TA96/ACT	Telecommunications Act of 1996
TCAP	Transaction Capability Application Part
TAFI	Trouble Analysis Facilitation Interface
TCG	TCG of South Florida
TELRIC	Total Element Long Run Incremental Cost
Time Warner	Time Warner AxS of Florida, L.P./Time Warner Connect
TR	Transcript
TRA	Telecommunications Resellers Association
TSLRIC	Total Service Long Run Incremental Cost
UNE	Unbundled Network Element
USOC	Uniform Service Order Code
WorldCom	WorldCom, Inc.

## **I. INTRODUCTION**

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions applicable to the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC must consult with the Attorney General and the appropriate state commission before making a determination regarding a BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B).

With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

Before we address the specific requirements of Section 271(c), we note that a number of complaints have been lodged against BellSouth in this proceeding. We do address or recognize the various disputes surrounding these complaints raised throughout our analysis contained herein. We caution the parties, however, that a Section 271 proceeding is not the appropriate forum to resolve disputes or complaints. We believe BellSouth and the ALECs should first seek to resolve disputes between themselves and according to the terms of their agreements. They should document their attempts to resolve disputes, and if they are unable to resolve them, either party may file a complaint with this Commission if their agreement contemplates such an action. We believe this process is necessary so that the 271 application process does not continue indefinitely.

## **II. BACKGROUND**

On June 28, 1996, we opened this docket to begin to fulfill our consultative role on the eventual application of BellSouth Telecommunications, Inc. for authority to provide in-region interLATA service. The following entities intervened in the proceeding: American Communications Services of Jacksonville, (ACSI); AT&T Communications of the Southern States (AT&T); the Florida Competitive Carriers Association (FCCA); Florida Cable Telecommunications Association (FCTA) Intermedia Communications, Inc. (ICI); MCI Telecommunications Corporation (MCI); Metropolitan Fiber Systems of Florida, Inc., and WorldCom, Inc. (WorldCom); Preferred Carrier Services, Inc., (PCS); Sprint Communications Company Limited Partnership and Sprint

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Metropolitan Networks, Inc., (Sprint/SMNI); Telecommunications Resellers Association, (TRA); Teleport Communications Group, Inc., (TCG), Time Warner AxS of Florida, L.P. and Digital Media Partners (Time Warner) and the Communications Workers of America (CWA). Eventually, PCS, TRA and Time Warner withdrew from the docket. They, as well as CWA, did not file posthearing statements or briefs on the issues.

On July 19, 1996, Order No. PSC-96-0945-PCO-TL, was issued to establish a tentative list of issues to be determined in this proceeding. The issues tracked the language of Section 271(c)(1)(A), Track A, 271(c)(1)(B), Track B, and 271(c)(2)(B), also known as the competitive checklist.

On November 13, 1996, AT&T, MCI, WorldCom and FCCA filed a Joint Motion for Advance Notice of Filing. The movants requested that we order BellSouth to provide 120 days advance notice of its intent to apply to the FCC for interLATA authority. The movants also requested that we order BellSouth to include at the time it provided its notice all evidence, including prefiled testimony and exhibits, upon which BellSouth intended to rely in response to the issues identified in Order No. PSC-96-0945-PCO-TL. BellSouth filed its response in opposition to the Motion on November 21, 1996. We denied the Joint Motion by Order No. PSC-97-0081-FOF-TL, issued on January 27, 1997.

On December 6, 1996, the FCC issued a Public Notice, FCC 96-469, Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act. In that Notice, the FCC stated that it would require the state commission to file its written consultation with the FCC not later than approximately 20 days after the issuance of the Initial Public Notice. The FCC also set out specific requirements for BOC applications.

On May 27, 1997, FCCA, AT&T and MCI filed a Joint Motion For Advance Ruling on BellSouth's Ineligibility for "Track B" and to Delete Portion of Issue 1. BellSouth filed its response in opposition on June 9, 1997. We denied the Motion by Order No. PSC-97-0915-FOF-TL, issued on August 4, 1997.

On June 12, 1997, Order No. PSC-97-0703-PCO-TL, Second Order Establishing Procedure, was issued. That Order established the hearing schedule in the case and required BellSouth to submit specific documentation in support of its Petition, which was scheduled to be filed on July 7, 1997. On July 2, 1997, Order

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No. PSC-97-0792-PCO-TL, Order Modifying Procedural Schedule, was issued. That Order set out additional issues to be addressed.

On July 7, 1997, BellSouth filed its Petition and supporting documentation. BellSouth filed the direct testimony and exhibits of 5 witnesses and a draft Statement of Generally Available Terms and Conditions (SGAT). The intervenors filed their testimony on July 17, 1996, and all parties filed rebuttal testimony on July 31, 1997.

On July 25, 1997, Time Warner filed a Motion to Dismiss or in the Alternative for Abatement of BellSouth Telecommunications' Application for InterLATA relief. BellSouth filed its response in opposition to Time Warner's Motion on August 1, 1997. We denied Time Warner's Motion by Order No. PSC-97-1031-PCO-TL, issued on August 27, 1997.

The hearing on BellSouth's Petition began on September 2, 1997, and ended on September 10, 1997. At the commencement of the hearing, we denied BellSouth's Motion to Reconsider Order No. PSC-97-1038-PCO-TL, in which the Prehearing Officer granted FCCA's Motion to Compel certain discovery responses. We also denied the Joint Motion to Strike the Draft Statement of Generally Available Terms or in the Alternative Sever the Proceeding, filed by FCCA, AT&T, ACSI, WorldCom, MCI and ICI.

At the conclusion of the hearing, BellSouth stated that it would file the final version of the SGAT, which would mirror the draft filed on August 25, 1997, as late-filed exhibit number 125.

It also stated that it would file an additional copy of the final version to begin the 60 day review process contemplated by Section 252(f) of the Act. On September 11, 1997, BellSouth filed late-filed exhibit number 125. On September 17, 1997, AT&T filed its objection to exhibit 125 stating that it did not mirror the August 25, 1997 version. BellSouth responded by filing another version of late-filed exhibit 125 on September 18, 1997.

This version did mirror the August 25, 1997 draft. Since the official version of the SGAT was filed after the record was closed, however, we considered the August 25, 1997, draft in our findings within the context of the 271 proceeding. When BellSouth filed the official version on September 18, 1997, the 60 day review period contemplated by Section 252(f) of the Act began. Therefore, we also address the official version in this Order. Our action on the official SGAT, however, is proposed agency action since it was filed after the close of the hearing

on BellSouth's Petition.

Having considered the evidence presented at hearing and the posthearing briefs of the parties, our findings on whether BellSouth has met the requirements of Section 271(c) are set forth herein. Specifically, we find that BellSouth is not eligible to proceed under Track B at this time, because it has received qualifying requests for interconnection that if implemented would meet the requirements of Section 271(c)(1)(A), also known as Track A. Our evaluation of the record on whether BellSouth meets the requirements of Section 271(c)(1)(A) indicates that while there is a competitive alternative in the business market, there is not sufficient evidence at this time to determine whether there is a competitive alternative in the residential market. Thus, it appears based on the evidence in this record that BellSouth does not meet all of the requirements of Section 271(c)(1)(A) at this time. We also find that BellSouth has met checklist items 3,4,8,9,10,11,12,13, and the majority of checklist item 7. BellSouth has not met the requirements of checklist items 1,2,5,6, and 14. BellSouth has met the requirements of several checklist items in this proceeding, and therefore may not be required to relitigate those issues before us in a future proceeding. We do find, however, that when BellSouth refiles its 271 case with us, it must provide us with all documentation that it intends to file with the FCC in support of its application. Finally, we find that we cannot approve BellSouth's SGAT at this time as discussed more fully below.

### **III. COMPLIANCE WITH SECTION 271(c)(1)(A)**

#### **A. Introduction**

Section 271(c)(1)(A) states that a BOC meets the requirements of this subparagraph if it has: 1) entered into one or more binding agreements; 2) that have been approved under Section 252, specifying the terms and conditions under which; 3) the company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service; 4) to residential and business subscribers for a fee; and 5) which service is offered either over the competitors' own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

**B. Existence of One or More Binding Agreements That Have Been Approved Under Section 252**

Section 271(c)(1)(A) requires BellSouth to have entered into binding interconnection agreements that have been approved by the Florida Commission. BellSouth asserts that as of May 30, 1997, it has entered into 55 local interconnection agreements in Florida, which for the most part have been approved by this Commission. It is undisputed by all of the parties in this proceeding that BellSouth has entered into one or more binding agreements with unaffiliated providers that have been approved under Section 252 of the Act.

Upon consideration, we agree the record in this proceeding demonstrates that BellSouth has entered into one or more binding agreements in Florida with unaffiliated competing providers that have been approved under Section 252 of the Act. As of August 6, 1997, BellSouth had entered into 19 negotiated interconnection agreements in Florida that had been approved by this Commission pursuant to Section 252 of the Act. In addition, BellSouth had entered into arbitrated interconnection agreements in Florida with MCI, MFS, AT&T, and Sprint that have been approved by this Commission pursuant to Section 252 of the Act. Furthermore, we note that the MCI and AT&T arbitrated agreements contain all of the checklist items. We discuss whether BellSouth has "fully implemented" each of the checklist items in Part VI of this Order.

**C. Provision of Access and Interconnection to Unaffiliated Competing Providers of Telephone Exchange Service**

This portion of Section 271(c)(1)(A) requires BellSouth to provide access and interconnection to unaffiliated competing providers of telephone exchange service to business and residential consumers. A number of parties in this proceeding argue that there are no "competing providers" in Florida as required by Section 271(c)(1)(A). BellSouth asserts that it is provisioning network elements and network functions to facilities-based competitors in Florida, thereby satisfying this portion of Section 271(c)(1)(A). BellSouth also argues that the Act does not require that a particular volume of customers be



served. Witness Varner asserts that Section 271(c)(1)(A) does not require that competing carriers provide service to more than one residential and one business customer in order to satisfy the Track A requirement. BellSouth asserts that the Act requires only that it provide interconnection and access to one or more facilities-based providers that, taken together, serve at least one residential and one business customer. The competing carriers in this proceeding assert that a certain threshold level of competition must exist before a BOC enters the interLATA market.

#### **1. Provision of Access and Interconnection**

BellSouth asserts that eight facilities-based ALECs; MediaOne, MCI Metro, MFS, National Tel, ICI, Sprint, TCG and Time Warner, have established local interconnection between their networks and BellSouth's network in Florida as of May 15, 1997. In addition, BellSouth contends that each of these ALECs has also completed requests for BellSouth to provide retail services at a wholesale discount in order to provide services to their business and residential customers on a resold basis. BellSouth also contends that it has received and processed requests for interim number portability for numbers that were formerly served by BellSouth as residential customers and has received reports of facilities-based ALEC marketing efforts in the multi-family dwelling unit (MDU) sector of the Florida residential market. Although BellSouth contends that it does not have the information to determine conclusively if any of these ALECs are actually providing service to residential or business customers, it believes that these carriers have the ability to provide telephone exchange service to residential and business subscribers.

BellSouth also contends that it is provisioning network elements and network functions to facilities-based competitors in Florida. Witness Varner asserts that the network elements that are being provided to competing providers in Florida include 7,612 interconnection trunks, 7 switch ports, and 1,085 loops. In addition, witness Varner contends there are 7 physical collocation arrangements in progress, 34 virtual collocation arrangements completed and 24 additional virtual collocation arrangements in progress. BellSouth also asserts that it has 9 license agreements for poles, ducts and conduits/rights of way, 277 ALEC trunks terminating to BellSouth directory assistance, 911 and intercept services, 11 verification and inward trunks,

and 31 ALEC trunks to BellSouth for operator services.

BellSouth also provided a breakdown, by entity, of the network elements and network functions requested in Florida. While this information is proprietary, the various parties verified the accuracy of the information at hearing. We note, however, that the quantity of network elements and network functions provided by BellSouth in Exhibit 2 in this proceeding, which was verified by the parties, differs from that provided by BellSouth in witness Varner's testimony.

BellSouth believes there is no question that this portion of the Act is satisfied as to business customers. BellSouth asserts that there are at least five interconnectors providing service to business customers which meet this requirement. BellSouth also asserts that there are currently at least two facilities-based providers that are serving residential customers. BellSouth believes that based on a response provided by FCTA, MediaOne is serving residential customers in two different local markets in Florida. BellSouth states that it is aware of two cable companies providing business and residential customers service over their own facilities; however, it is unable to provide any estimates of the total facility-based customers being served by these companies. In addition, BellSouth asserts that TCG is providing facilities-based service to one provider that is, in turn, providing this service to residential subscribers. While BellSouth believes that there is sufficient evidence that facilities-based providers have interconnection agreements with BellSouth and are providing service to residential customers, AT&T contends that there is no evidence in the record to support witness Varner's assertion that these carriers are providing service to residential customers.

TCG witness Kouroupas testified that TCG is a facilities-based ALEC that is currently operating in Florida. TCG has deployed a network consisting of about 380 route miles of fiber optic cable throughout the Southeast Florida LATA, including the installation of a switch in Miami. TCG contends that it provides local exchange service to under 500 business customers either entirely over its own facilities or in part through the use of TCG's own facilities and unbundled elements that TCG has purchased from BellSouth. While witness Kouroupas asserts that TCG does not have tariffed residential service and does not provide residential service in the traditional sense, witness Kouroupas asserts that TCG sells services to resellers and shared

tenant service providers who may, in fact, be providing residential service. In fact, witness Kouroupas testified that at least one STS provider is purchasing service from TCG and is, in turn, reselling it to residential subscribers. We note, however, that there is no additional evidence in this proceeding to confirm if one or more residential subscribers are actually being provided service. Witness Kouroupas also testified that TCG is not offering service through the resale of BellSouth's telecommunications service.

BellSouth argues that the provision of residential service by an ALEC to subscribers through a downstream reseller satisfies the requirements of Track A. We agree. Through the use of facilities owned by TCG, it appears that local exchange service is either being provided to residential subscribers or is intended to be provided to residential subscribers. We do not believe that the existence of a reseller between TCG and the residential subscriber changes this. Furthermore, if the existence of a reseller causes BellSouth not to be compliant with Section 271(c)(1)(A), then any provider could conceivably serve residential subscribers with its own facilities through the use of a reseller, thereby avoiding a scenario that would ultimately satisfy Track A. Thus, we believe that the provision of residential service by an ALEC through a downstream reseller may satisfy the requirement of Track A. Based on the evidence in this proceeding, however, we are unable to confirm if one or more residential subscribers are actually being served by a competing provider, or if residential subscribers are paying for service.

Therefore, while we agree that BellSouth is providing access and interconnection to TCG, we cannot determine whether TCG is a "competing provider" of local service to residential subscribers.

FCTA asserts that BellSouth is providing access and interconnection to MediaOne; however, it is pursuant to an interconnection agreement approved under Section 364.162, Florida Statutes, not pursuant to Section 252 of the Act. FCTA also contends that if BellSouth is relying on the MediaOne agreement to satisfy Section 271(c)(1)(A), it does not address all of the 14 checklist items. BellSouth witness Varner testified that the MediaOne agreement has not been implemented to the extent that all 14 checklist items have been addressed. The current agreement that BellSouth has entered into with MediaOne meets all of the checklist items with the exception of checklist item 3. As discussed below, however, we do not believe that Section

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271(c)(1)(A) requires that each interconnection agreement contain all elements of the competitive checklist to be a binding agreement. We believe a combination of interconnection agreements can be used to satisfy the requirements of Track A. Accordingly, FCTA's argument on this point is without merit.

FCTA asserts that MediaOne is currently providing residential service over its own facilities to fewer than 35 subscribers in the city of Plantation, Florida. These residential subscribers have to date not been assessed a fee for their local telephone exchange service. FCTA contends that MediaOne is also currently providing business service to fewer than 10 subscribers with fewer than 2,000 subscriber lines as of July, 1997. FCTA asserts that these business subscribers are all assessed a fee for their local telephone exchange service. The total billings for each month May-June, 1997 were less than \$90,000 a month for local business telephone exchange service.

Upon consideration, we are unable to determine whether MediaOne's residential offering is a test or whether MediaOne intends to expand its service offering to additional residential subscribers. While BellSouth asserts it believes that MediaOne's offering involves customers who are actually getting service, witness Varner testified that he has no personal knowledge whether MediaOne has billing systems in place to charge for local exchange service. Furthermore, MediaOne's agreement with BellSouth was negotiated pursuant to state law, rather than Section 252 of the Act. There is no Commission order approving it pursuant to Section 252. Therefore, it is not clear whether there is a binding agreement upon which BellSouth may rely to satisfy Section 271(c)(1)(A).

ICI asserts that BellSouth cannot satisfy Track A, because it has not demonstrated that operational facilities-based competing providers of telephone exchange service now serve residential and business customers in Florida beyond a *de minimis* level. While ICI asserts that it is currently providing local exchange service to business customers in Florida either exclusively over its own facilities or in combination with UNEs purchased from BellSouth, witness Strow testified that ICI is only serving residential customers through resale. Witness Strow testified that ICI provides telephone exchange service in the

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major metropolitan areas in Florida, including Miami, Fort Lauderdale, West Palm Beach, Tampa, St. Petersburg, Clearwater, Jacksonville, and the Orlando area. ICI currently has its own switches in Miami, Clearwater, Jacksonville, and Orlando.

Sprint also asserts that it is currently providing local exchange service to business customers in Florida, either exclusively over its own facilities or in combination with UNEs purchased from BellSouth. Sprint is a facilities-based ALEC with its own central office switch and a limited fiber optic backbone network. Witness Closz testified that Sprint is focused primarily on serving business customers in the metropolitan Orlando area. While Sprint does not currently serve residential customers through its own facilities or resale, witness Closz testified that Sprint has plans to serve residential customers in the future. Witness Closz, however, was unable to state when that would occur.

While ACSI, LCI, and MFS have requested UNEs from BellSouth, they are not currently providing local exchange service to business or residential customers in Florida exclusively over their own facilities or in combination with UNEs purchased from BellSouth. Witness Falvey and witness Kinkoph testified, however, that ACSI and LCI, are providing service to business customers through resale.

MCI asserts that it has an interconnection agreement with BellSouth under which BellSouth is providing some interconnection. MCI contends that BellSouth is not providing access and interconnection in compliance with its agreement or with the Act. MCI is a facilities-based ALEC with local switches located in Miami, Orlando, Tampa, and Ft. Lauderdale. MCI asserts that it is currently serving a number of business customers either exclusively over its own facilities or in combination with UNEs purchased from BellSouth. MCI is currently not serving any residential customers either exclusively or predominantly over its own telephone exchange service facilities in Florida. MCI ordered an unbundled network element combination to provide residential service to a MCI employee on a test basis in Jacksonville; however, MCI has not charged a fee for this service, since it is a test. MCI also asserts it is conducting a residential resale test in Florida utilizing approximately 60 of

its employees, and a business resale test utilizing a few of its own business offices.

AT&T asserts that it is clear from the record that BellSouth is providing some form of access and interconnection to some carriers. AT&T contends that it is not currently providing local exchange service to business or residential customers in Florida exclusively over its own facilities or in combination with UNEs purchased from BellSouth. AT&T has ordered UNEs from BellSouth and is in the process of performing a concept test on the provision of local exchange service utilizing four AT&T employees. FCCA asserts that while BellSouth is providing some level of interconnection, it is primarily on a small test basis with many problems; thus, it does not meet the Act's requirements. AT&T notes that the FCC's analysis in the Ameritech Order focused more on the nature and level of competition rather than the quality of interconnection. AT&T maintains, however, that BellSouth is not "providing access and interconnection to its network facilities from the network facilities of such competing providers" in Florida, because the nature and level of competition is insufficient. AT&T asserts that because BellSouth did not specify the interconnection agreements upon which it relies to meet the requirements in Section 271(c)(1)(a), it is difficult to analyze this case in a manner similar to the analysis conducted by the FCC in the Ameritech case.

## **2. "Fully Implemented" Checklist**

The competitors argue that Section 271(c)(1)(A) provides that BellSouth's entry into the interLATA market may not occur absent the presence of at least one or more interconnection agreements with a facilities-based local competitor that implements the Act's competitive checklist. MCI asserts that Section 271(c)(1)(A) requires the BOC to "provide" and "fully implement" each of the fourteen checklist items. MCI further asserts that Section 271(c)(2) requires that a BOC requesting entry under Track A must show that it is actually "providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)." FCTA and MCI refer to Section 271(d)(3)(A)(I), which requires full implementation of the competitive checklist, and contend that the Act precludes

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BellSouth from entering the interLATA market under Track A unless it has "fully implemented" all the items in the competitive checklist. FCTA and MCI assert that the burden of proof on all factual issues lies with BellSouth, and BellSouth has failed to demonstrate that all items in the competitive checklist are fully implemented in accordance with the Act's requirements.

FCTA argues that to satisfy the requirements of Section 271(c)(2)(B), BellSouth must demonstrate that prices for checklist items are based on cost studies conducted in accordance with FCC standards. We recognize that interim rates do exist in some of the agreements that BellSouth has entered into with competitors in Florida. While we also agree that BellSouth must demonstrate that the prices for the checklist items are cost based, we find that for purposes of satisfying Track A, FCTA's argument is without merit. As mentioned earlier, we agree with the FCC's conclusion that Section 271(c)(1)(A) does not require that each agreement contain permanent cost-based prices for all terms of the competitive checklist to be considered a "binding agreement." Therefore, for the reasons stated above, we find that BellSouth has satisfied this portion of Section 271(c)(1)(A).

MFS, ICI and ACSI assert that BellSouth is not providing the access and interconnection required by the Act, because to BellSouth failed to fulfill each of the checklist items. In addition, ICI asserts that while BellSouth is providing some level of access and interconnection, it is not providing unbundled network elements, interconnection, and nondiscriminatory access to operations and support systems, in the manner contemplated by the Act. MCI contends that BellSouth's reliance on the SGAT is an admission that it has not fully implemented all of the checklist items in its interconnection agreements.

BellSouth argues that while it is providing access and interconnection to network facilities for competing providers, its SGAT provides an additional vehicle to provide those items of the checklist that have not been requested by competing providers. BellSouth contends that when its SGAT is approved, it will have generally offered every item on the 14 point competitive checklist. BellSouth's witness Scheye testified that

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offerings that address each of the 14 checklist items have not just been made to its competitors, they have actually been ordered. BellSouth asserts that no party provided testimony to contradict this fact. According to BellSouth, the parties' real argument here is that the interconnection and access BellSouth provides is not adequate to meet the requirements of the checklist. It is not that BellSouth does not provide access and interconnection at all.

BellSouth argues that its proposed SGAT provides each of the functions, capabilities, and services that the Act requires in order for all ALECs to enter the local exchange market. BellSouth contends that the features, functions and services in its proposed SGAT are identical to the items in the 14 point checklist. Thus, BellSouth believes that if the SGAT satisfies Sections 251 and 252(d), then it also meets the competitive checklist in 271(c)(2)(B). BellSouth further argues that where a competitive checklist item has not been requested, its SGAT is necessary to supplement Track A, because it can demonstrate that the items are made available in a concrete, legally binding manner.

Upon consideration, we find that since BellSouth has entered into arbitrated agreements approved by this Commission pursuant to Section 252 that include provisions for each of the 14 competitive checklist items, an SGAT is unnecessary. The interconnection agreements are concrete, legally binding agreements that satisfy a Track A petition for entry.

According to the FCC, Section 271(c)(1) and the competitive checklist in Section 271(c)(2)(B) establish independent requirements that must be satisfied by a BOC petition for entry. The fact that BellSouth has received a request for access and interconnection that would satisfy Section 271(c)(1)(A) if implemented, does not mean that the interconnection agreement, when implemented, would necessarily satisfy the competitive checklist. In addition, the FCC concluded that there is nothing in Section 271(c)(1)(A) or Section 271(c)(1)(B) that suggests that a qualifying request for access and interconnection must be one that contains all fourteen items in the checklist. We agree with the FCC's interpretation. We do not believe that BellSouth automatically fails to satisfy Section 271(c)(1)(A) or Section



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271(c)(1)(B) of the Act simply because every interconnection agreement does not address every checklist item.

In the Ameritech order, the FCC specifically found that Section 271(c)(1)(A) does not require that each interconnection agreement contain all elements of the competitive checklist to be considered a binding agreement for 271 purposes. The FCC also stated that it did not believe that competing LECs and IXC's would necessarily purchase each checklist item in every state. Competitors may need different checklist items, depending upon their market strategies. The FCC stated that the IXC's interpretation of Section 271(d)(3)(A)(I) could create an incentive for competitive carriers to refrain from purchasing network elements in order to delay BOC entry into the in-region, interLATA services market.

Upon consideration, we agree with the FCC that an interconnection agreement does not need to contain all 14 items of the checklist to be considered a "binding agreement." Further, we do not believe that BellSouth would automatically fail to satisfy Track A unless it has "fully implemented" each of the checklist items. We note that the FCC concluded that Ameritech satisfied Section 271(c)(1)(A), but failed to satisfy several of the checklist items in Section 271(c)(2)(B), including OSS, access to 911 and E911, and interconnection. Section 271(c)(1)(A) and Section 271(c)(2)(B) are separate requirements. A BOC could potentially satisfy the Track A requirement of Section 271(c)(1)(A) without satisfying the competitive checklist in subsection (c)(2)(B).

### **3. "Competing Provider"**

Based on the evidence in this proceeding, we find that there are ALECs operating in Florida. These ALECs are providing a commercial alternative to local exchange business subscribers, thereby satisfying the phrase "competing provider" contained in the Act, and recently defined by the FCC in the Ameritech order. According to the FCC, the term "competing provider" in Section 271(c)(1)(A) suggests that there must be an actual commercial alternative to the BOC. The FCC pointed out that this interpretation is consistent with the Joint conference Committee's Report, which stated that "[t]he committee expects